

- Petitioner opposes respondents' request for Summary Judgment due to; Miscarriage of justice now supplement submitted to ground of ineffective assistance of counsel, as No Counsel Appointed at All.  
See McQuiggin v. Perkins, — U.S. —, 133 S.Ct. 1924, 1931-32, 1936, 185 L.Ed.2d 1019 (2013) cites recognizing the application of miscarriage of justice as an exception to justify consideration of procedurally default claims, that it is more likely than Not, No responsible juror would have convicted him in light of this present ground.
- Petitioner as evident was booked on April 19, 2012 and not given trial counsel till July 27, 2012 (as evident) As shown now by Petitioner as a Sixth Amendment and due process of rights violation. As See Maine v. Moulton, 474 U.S. 159, 170, 106 S.Ct. 477, 484, 88 L.Ed.2d 481, 492 (1985) cites ("[T]o deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during the trial itself.")
- See in Edward v. Carpenter, 529 U.S. 446, 451, 120 S.Ct. 1587, 1591, 146 L.Ed.2d 518, 523 (2000) reaffirms this cited exception.

United States District Court  
Southern District of Texas  
FILED

AUG 07 2014

Laura J. Bradley, Clerk of Court

- Ground Five; Was there a miscarriage of justice by Authorities, AS A denial of due process AS A State Afforded right to be arraigned And Appointed Afforded Counsel AS requested? See pursuant to Texas Code of Criminal Procedure Article 15.17 (a), (b); (a) cites: In each case ... person having the custody of the person arrested shall without unnecessary delay, but not later than 48 hours after arrest... taken before a magistrate ... given right to counsel if requested; (b) cites: Arraignment of accused which Hess was deprived April 19, 2012 till <sup>July</sup> ~~Aug~~ 27, 2012, "See page 1, in Events & Order of the Court 197<sup>th</sup> District Court Case Summary as Attach", date: 07/27/2012 cited!

As Petitioners due process rights were violated in reference to State/Federal Law as to States' Bill of Rights and U.S. Constitution 6<sup>th</sup> Amendment AS to be Deprive of counsel (ineffective assistance of counsel) And 5<sup>th</sup> And 14<sup>th</sup> Amendment.

6<sup>th</sup> cites: In all criminal prosecutions the Accused shall enjoy ... to have assistance of counsel for his defense, the 5<sup>th</sup> And 14<sup>th</sup> cite No state shall ... deprive any person of life, liberty, or property without due process of law, Nor deny to any person of life, liberty, or property within its jurisdiction the equal protection of the law. Rights Hess As shown WAS deprive here.

See in Hartsfield v. Colburn, 371 F.3d 454 (8<sup>th</sup> Cir. 2004) Hess As pretrial detainee WAS entitled to protection under 14<sup>th</sup> Amendment AS under the 8<sup>th</sup> Amendment he WAS deprive. 8<sup>th</sup> cites: No cruel and unusual punishment inflected, AS deprive Arraignment/Counsel for months.

As See Final Argument, As petitioner opposes All State Attorney General's Traverse Response to § 2254 presented grounds of error And foregoing supplement issue now presented to ground five error.

Petitioner was deprived by state actively interferes as requested access to the system (courts) that has established for considering innocents and clemency petitions for due process is violated. See Noel v. Norris, 336 F.3d 648 (8<sup>th</sup> Cir. 2003) As denial of counsel cited.

Petitioner cites to Courts' holding to deprive a person of counsel during the period prior to trial may be more damaging than denial of counsel during trial itself. Maine v. Moulton, 474 U.S. 159, 170, 106 S.Ct. 477, 484, 88 L.Ed.2d 481, 492 (1985) See cited documents?

Petitioner cites his claim the state's conduct waived its jurisdiction over him as convicted prisoner, as shown the states' inactions were so affirmatively wrong, so grossly negligent as not arraigning nor assigning requested counsel for several months after booking/arrest violated due process he should be ordered release. See Campen v. Norris, 36 F.3d 782 (1994)

Miscarriage of Justice, exception to rule of forfeiture by procedural default is invoke by petitioners cited. claim of errors to Constitution has resulted in his conviction who he is actually innocent of Allege crime And it is in light of evidence than Not, that No reasonable juror would have found him guilty beyond A reasonable doubt based on Admissible evidence. See e.g., Schulup v. Dello, 513 U.S. —, 115 S.Ct. 851, 130 L.Ed.2d 808, 836 (1995),

Supplement to Ineffective Assistance Of Counsel: See Coleman v. Thompson, 501 U.S. 722, 754, 111 S.Ct. 2546, 2567, 115 L.Ed.2d 649, 672 (1991) cites: [I]t is not the gravity of the attorneys' error that matters, but that it constitutes a violation of petitioners' right to counsel as petitioners' cited ground.

The State of Texas  
vs  
SCOTT HESS

§§§ Location: 197th District Court  
Judicial Officer: Lopez, Migdalia  
Filed on: 06/20/2012  
Prosecutor Control Number: DA2012-5839

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CASE INFORMATION

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Offense	Deg	Date	Case Type:
<b>No Jurisdiction</b>			
1. INDENC W/CHILD/EXPOSURE- 12B2011/TORTEYA ACN: 201208182 Arrest: 04/19/2012	F3	04/19/2012	Case Type: <b>Felony Offense</b>
Jurisdiction: <b>Brownsville PD</b>			
2. INDENC W/CHILD/EXPOSURE- 12B2012/TORTEYA ACN: 201208182 Arrest: 04/19/2012	F3	04/19/2012	Case Flags: <b>Omnibase</b>
BPD - Brownsville Police Department			
BPD - Brownsville Police Department			

**Statistical Closures**

10/10/2012 CONVICTION - Guilty Plea or Nolo Contendere (OCA)

DATE	CASE ASSIGNMENT								
	<p><b>Current Case Assignment</b></p> <table> <tr> <td>Case Number</td><td>2012-DCR-01617</td></tr> <tr> <td>Court</td><td>197th District Court</td></tr> <tr> <td>Date Assigned</td><td>06/21/2012</td></tr> <tr> <td>Judicial Officer</td><td>Lopez, Migdalia</td></tr> </table>	Case Number	2012-DCR-01617	Court	197th District Court	Date Assigned	06/21/2012	Judicial Officer	Lopez, Migdalia
Case Number	2012-DCR-01617								
Court	197th District Court								
Date Assigned	06/21/2012								
Judicial Officer	Lopez, Migdalia								

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PARTY INFORMATION

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*Lead Attorneys*

State	<b>ERSKINE, BRIAN</b> <b>THE STATE OF TEXAS</b>	<b>ERSKINE, BRIAN</b> 956-544-0849(W)
Defendant	<b>HESSE, SCOTT WILLIAM</b> DOB: 07/20/1962 Age: 49	<b>SOROLA, LOUIS S.</b> <i>Court Appointed</i> (956)504-2911(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
06/20/2012	<input checked="" type="checkbox"/> Indictment or Information (OCA) <i>Original Case Filed by Indictment or Information (OCA)</i>	
06/20/2012	<input checked="" type="checkbox"/> CR-43/CR-44 <i>CR-43/CR-44</i>	
06/20/2012	<input checked="" type="checkbox"/> Order Transferring Cause (Judicial Officer: Leal, Janet ) <i>Order Transferring Cause</i>	
07/16/2012	<input checked="" type="checkbox"/> Notice of Arraignment (Judicial Officer: Lopez, Migdalia ) <i>Notice of Arraignment</i>	
07/27/2012	<input checked="" type="checkbox"/> Appointment of Attorney (Judicial Officer: Lopez, Migdalia )	

	Party: Defendant's Attorney GALARZA, SANTIAGO <i>Appointment of Attorney</i>
07/31/2012	<b>Precept</b> HESS, SCOTT WILLIAM Served: 08/09/2012
08/07/2012	<b>Arraignment Hearing</b> (8:30 AM) (Judicial Officer: Lopez, Migdalia) Events: 06/20/2012 Indictment or Information (OCA)
08/07/2012	Journal Entry (Judicial Officer: Lopez, Migdalia ) <i>Defendant arraigned and Pled Not Guilty; Announcement set for 09/21/12 &amp; Trial 10/01/12 @ 9 a.m.; attorney requested Psy. Evaluation.</i>
08/07/2012	<input checked="" type="checkbox"/> <b>Arraignment</b> <i>Arraignment</i>
08/08/2012	<input checked="" type="checkbox"/> <b>Order</b> (Judicial Officer: Lopez, Migdalia ) <i>Order Appointing Psychiatrist</i>
09/04/2012	Psychiatric Evaluation <i>Psychiatric Evaluation</i>
09/05/2012	<b>Psychiatrist Evaluation</b> (1:00 PM) (Judicial Officer: Lopez, Migdalia) <i>Status Hearing on report; Announcement set for 09/21/12 @ 9 a.m.</i>
09/05/2012	Journal Entry (Judicial Officer: Lopez, Migdalia ) <i>Case reset for status review hearing on case.</i>
09/14/2012	<b>Status Hearing</b> (9:00 AM) (Judicial Officer: Lopez, Migdalia)
09/14/2012	Journal Entry (Judicial Officer: Lopez, Migdalia ) <i>Defendant Pled Nolo Contendere; PSI Ordered.</i>
09/14/2012	<input checked="" type="checkbox"/> <b>Written Waiver and Consent to Stipulation of Testimony</b> <i>Written Waiver and Consent to Stipulation of Testimony, Waiver of Jury, and Plea of Guilty</i>
09/21/2012	<b>Announcement</b> (8:59 AM) (Judicial Officer: Lopez, Migdalia)
09/21/2012	Journal Entry (Judicial Officer: Lopez, Migdalia ) <i>Defendant Pled Guilty; PSI Ordered.</i>
10/08/2012	<input checked="" type="checkbox"/> <b>Pre-Sentence Investigation Report</b>

	<p style="text-align: center;">Guilty</p> <p>2. INDENC W/CHILD/EXPOSURE- 12B2012/TORTEYA Guilty</p>
10/10/2012	<p><b>Disposition</b> (Judicial Officer: Lopez, Migdalia)</p> <p>1. INDENC W/CHILD/EXPOSURE- 12B2011/TORTEYA Convicted -</p> <p>2. INDENC W/CHILD/EXPOSURE- 12B2012/TORTEYA Convicted -</p>
10/10/2012	<p><b>Sentence</b> (Judicial Officer: Lopez, Migdalia)</p> <p>1. INDENC W/CHILD/EXPOSURE- 12B2011/TORTEYA Sentence - Prison (OCA) Confinement to Commence 10/10/2012 10 Years , TDCJ - Prison, Texas Department of Criminal Justice Jail Credit 176 Days JUDGMENT OF CONVICTION SENTENCE TO INSTITUTIONAL DIVISION.</p> <p>2. INDENC W/CHILD/EXPOSURE- 12B2012/TORTEYA Sentence - Prison (OCA) Confinement to Commence 10/10/2012 10 Years , TDCJ - Prison, Texas Department of Criminal Justice Jail Credit 176 Days JUDGMENT OF CONVICTION SENTENCE TO INSTITUTIONAL DIVISION.</p>
10/12/2012	<p><b>Attorney Fees Expense Claim Form</b> (Judicial Officer: Lopez, Migdalia )</p> <p>Party: Defendant HESS, SCOTT WILLIAM <i>Attorney Fees Expense Claim Form</i></p>
10/22/2012	Inmate Trust Fund Order <i>Inmate Trust Fund Order</i>
11/26/2012	Pen Packet Received <i>Pen Packet Received by Sheriff's Office</i>
12/10/2012	<b>Correspondence</b> <i>Correspondence from Defendant to Hon. Judge M.Lopez</i>
09/11/2013	<b>Findings of Fact</b> Party: State THE STATE OF TEXAS
09/11/2013	<b>Application for Writ of Habeas Corpus</b> <i>Application for Writ of Habeas Corpus Seeking Relief From Final Felony Conviction Under Code Of Criminal Procedure, Article 11.07</i>
09/17/2013	<b>Findings of Fact</b> Party: State THE STATE OF TEXAS <i>Findings Of Fact And Conclusions Of Law</i>
09/18/2013	<b>CANCELED Status Hearing (1:00 PM) (Judicial Officer: Lopez, Migdalia)</b> <i>Other</i> <i>1. Defendant's Pro-Se Application for a Writ of Habeas Corpus Seeking Relief from Final Felony Conviction Under Code of Criminal Procedure, Article 11.07</i>
09/20/2013	<b>Letter Acknowledging Receipt of Writ of Habeas Corpus</b>

**CASE SUMMARY****CASE NO. 2012-DCR-01617***Letter Acknowledging Receipt of Writ of Habeas Corpus- Defendant*

09/20/2013

 Letter Acknowledging Receipt of Writ of Habeas Corpus*Letter Acknowledging Receipt of Writ of Habeas Corpus- Hon Migdalia Lopez*

10/31/2013

Scofflaw Removed

**DATE****FINANCIAL INFORMATION****Defendant HESS, SCOTT WILLIAM**

Total Charges

609.00

Total Payments and Credits

61.50

**Balance Due as of 11/15/2013****547.50**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS

RE: Civil Action No. 1:13-cv-190

SCOTT WILLIAMS Hess,  
Petitioner  
v.

WILLIAM STEPHENS,  
Respondent

DEAR HONORABLE CLERK;

- Please forward to proper court's attention for review petitioners' traverse response of denial of respondents Motion For Summary Judgment.
- Petitioner has supplement attachment of an issue dealing with cited miscarriage of justice which over rides (is exception) to any default allegation by respondent. Please disregard my other resent response to issue.
- Enclosed is new presented cited evidence as already part of states' files/records.

Certificate OF Service

On this 4<sup>th</sup> day of August, 2014 A true and correct copy of foregoing proceedings were sent by first U.S. Mail, to Attorney for the respondent at Jon R. Meadow, Ass. Attorney General, P.O. Box 12548, Capital Station, Austin, Texas 78711 and to U.S. District Court, 600 E. Harrison #101, Brownsville, Tx. 78526.

Respectfully Submitted,  
x Scott W. Hess 8/4/2014  
Scott William Hess #1841004  
Michael Unit  
2664 Fm 2054  
Tennessee Colony, Tx. 75886

Scott Williamson Hesse  
Michael Unit #1841004

2664 FM 2054

Tennessee Colony, Texas

75886

MAIL *[Signature]*  
United States District Court  
Southern District of Texas

AUG - 7 2014

RECEIVED  
David L. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT

600 EAST HARRISON #101  
Brownsville, Texas

78520

Highway Mail No. 1413-CV-190

